

MICHAEL S. BURKE, #150062
VOGL & MEREDITH LLP
456 Montgomery Street, 20th Floor
San Francisco, California 94104
Telephone: (415) 398-0200
Facsimile: (415) 398-2820

mburke@voglmeredith.com

Attorneys for Defendant
NATIONAL AUTO RECOVERY
BUREAU, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSHUA JACOBSON and EDEN
VILLARREAL,

Plaintiffs,

vs.

AMERICREDIT, NATIONAL AUTO
RECOVERY BUREAU, and TONY DOE,

Defendants.

No. C07-02694 JCS

ANSWER TO FIRST AMENDED
COMPLAINT BY DEFENDANT
NATIONAL AUTO RECOVERY BUREAU,
INC.

Jury Demanded

Judge: Hon. Joseph C. Spero

Defendant NATIONAL AUTO RECOVERY BUREAU, INC., answers the complaint
filed in this matter by Plaintiffs, as follows:

1. Answering Paragraph 1, Defendant admits that the language paraphrases
U.S.C. §1692. Defendant lacks sufficient information or belief to admit or deny the remaining
allegations contained therein.

2. Answering Paragraph 2, Defendant admits that the language paraphrases
California Civil Code §1788.1. Defendant lacks sufficient information or belief to admit or deny
the remaining allegations contained therein.

3. Answering Paragraph 3, Defendant denies it is a debt collector, and denies any
unlawful or abusive actions, and lacks sufficient information or belief to admit or deny the
remaining allegations contained therein.

1 4. Answering Paragraph 4, Defendant lacks sufficient information or belief to admit
2 or deny the allegations contained therein.

3 5. Answering Paragraph 5, Defendant denies the allegations contained therein.

4 6. Answering Paragraph 6, Defendant denies the allegations contained therein.

5 7. Answering Paragraph 7, Defendant admits personal jurisdiction is proper in the
6 State of California.

7 8. Answering Paragraph 8, Defendant denies that venue is proper.

8 9. Answering Paragraph 9, Defendant admits that JOSHUA was obligated to pay a
9 debt and that he was a "consumer" under 15 U.S.C. 1692a(3), but lacks sufficient information or
10 belief to admit or deny the allegations contained therein.

11 10. Answering Paragraph 10, Defendant lacks sufficient information or belief to admit
12 or deny the allegations contained therein.

13 11. Answering Paragraph 11, Defendant admits that JOSHUA is a natural person who
14 had consumer debt which was due and owing and that he was a debtor pursuant to California
15 Civil Code §1788.2(h). Defendant denies that it was a "debt collector" under 15 U.S.C. 1692a(5)
16 & (6), and lacks sufficient information or belief to admit or deny the remaining allegations
17 contained in paragraph 11.

18 12. Answering Paragraph 12, Defendant admits the allegations contained therein.

19 13. Answering Paragraph 13, Defendant denies the allegations contained therein.

20 14. Answering Paragraph 14, Defendant denies the allegations contained therein.

21 15. Answering Paragraph 15, Defendant denies that it was a "person" or a "debt
22 collector" under 15 U.S.C. 1692a(5) & (6), or that it used interstate commerce or the mails to
23 collect "debt" as defined by 15 U.S.C. 1692a(5) in the subject transaction, but lacks sufficient
24 information or belief to admit or deny the remaining allegations contained in paragraph 15.

25 ///

26 ///

27 ///

1 16. Answering Paragraph 16, Defendant admits that it is not an attorney or counselor
2 at law and that it, in the ordinary course of business regularly on behalf of others engages in the
3 repossession of property for creditors. Defendant denies that it is a "debt collector" as defined by
4 Civil Code §1788.2(c) & (d) . Defendant lacks sufficient information or belief to admit or deny
5 the remaining allegations as to other defendants contained in paragraph 16.

6 17. Answering Paragraph 17, Defendant lacks sufficient information or belief to admit
7 or deny the allegations contained therein.

8 18. Answering Paragraph 18, Defendant lacks sufficient information or belief to admit
9 or deny the allegations contained therein.

10 19. Answering Paragraph 19, Defendant admits that it conducted business in
11 California. Defendant lacks sufficient information or belief to admit or deny the remaining
12 allegations as to other defendants contained in paragraph 19.

13 20. Answering Paragraph 20, Defendant lacks sufficient information or belief to admit
14 or deny the allegations contained therein.

15 21. Answering Paragraph 21, Defendant lacks sufficient information or belief to admit
16 or deny the allegations contained therein.

17 22. Answering Paragraph 22, Defendant lacks sufficient information or belief to admit
18 or deny the allegations contained in therein.

19 23. Answering Paragraph 23, Defendant denies that the "debt" was assigned, placed
20 or otherwise transferred to this answering Defendant. Defendant admits that it was retained to
21 repossess the subject vehicle. Defendant lacks sufficient information or belief to admit or deny
22 the remaining allegations contained in paragraph 23.

23 24. Answering Paragraph 24, Defendant lacks sufficient information or belief to admit
24 or deny the allegations contained therein.

25 25. Answering Paragraph 25, Defendant denies the allegations contained therein.

26 26. Answering Paragraph 26, Defendant lacks sufficient information or belief to admit
27 or deny the allegations contained therein.

1 27. Answering Paragraph 27, Defendant denies that TONY had the authority to accept
2 any money or payment from JOSHUA, but lacks sufficient information or belief to admit or deny
3 the remaining allegations contained therein.

4 28. Answering Paragraph 28, Defendant denies that TONY had the authority to accept
5 any money or payment from JOSHUA, but lacks sufficient information or belief to admit or deny
6 the remaining allegations contained therein.

7 29. Answering Paragraph 29, Defendant denies that TONY had the authority to accept
8 any money or payment from JOSHUA or to indicate that the balance was "paid in full", but lacks
9 sufficient information or belief to admit or deny the remaining allegations contained therein.

10 30. Answering Paragraph 30, Defendant denies that TONY had the authority to accept
11 any money or payment from JOSHUA or to indicate that the balance was "paid in full", but lacks
12 sufficient information or belief to admit or deny the remaining allegations contained therein.

13 31. Answering Paragraph 31, defendant admits that TONY was not authorized to
14 accept money from JOSHUA, but lacks sufficient information or belief to admit or deny the
15 remaining allegations contained therein.

16 32. Answering Paragraph 32, Defendant lacks sufficient information or belief to admit
17 or deny the allegations contained therein.

18 33. Answering Paragraph 33, Defendant denies the allegations contained therein
19 except those relating to TONY repossessing the subject vehicle.

20 34. Answering Paragraph 34, Defendant lacks sufficient information or belief to admit
21 or deny the allegations contained therein.

22 35. Answering Paragraph 35, Defendant lacks sufficient information or belief to admit
23 or deny the allegations contained therein.

24 36. Answering Paragraph 36, Defendant lacks sufficient information or belief to admit
25 or deny the allegations contained therein.

26 37. Answering Paragraph 37, Defendant denies the allegations contained therein.

27 ///

1 38. Answering Paragraph 38, Defendant lacks sufficient information or belief to admit
2 or deny the allegations contained therein.

3 39. Answering Paragraph 35, Defendant lacks sufficient information or belief to admit
4 or deny the allegations contained therein.

5 40. Answering Paragraph 40, Defendant lacks sufficient information or belief to admit
6 or deny the allegations contained therein.

7 41. Answering Paragraph 41, Defendant lacks sufficient information or belief to admit
8 or deny the allegations contained therein.

9 42. Answering Paragraph 42, Defendant denies the allegations contained therein.

10 43. Answering Paragraph 43, Defendant lacks sufficient information or belief to admit
11 or deny the allegations contained therein.

12 44. Answering Paragraph 44, Defendant lacks sufficient information or belief to admit
13 or deny the allegations contained therein.

14 45. Answering Paragraph 45, Defendant lacks sufficient information or belief to admit
15 or deny the allegations contained therein.

16 46. Answering Paragraph 46, Defendant lacks sufficient information or belief to admit
17 or deny the allegations contained therein.

18 47. Answering Paragraph 47, Defendant lacks sufficient information or belief to admit
19 or deny the allegations contained therein.

20 48. Answering Paragraph 48, Defendant lacks sufficient information or belief to admit
21 or deny the allegations contained therein.

22 49. Answering Paragraph 49, Defendant lacks sufficient information or belief to admit
23 or deny the allegations contained therein.

24 50. Answering Paragraph 50, Defendant lacks sufficient information or belief to admit
25 or deny the allegations contained therein.

26 ///

27 ///

1 51. Answering Paragraph 51, Defendant admits that TONY repossessed the subject
2 vehicle, but lacks sufficient information or belief to admit or deny the remaining allegations
3 contained therein.

4 52. Answering Paragraph 52, Defendant lacks sufficient information or belief to admit
5 or deny the allegations contained therein.

6 53. Answering Paragraph 53, Defendant lacks sufficient information or belief to admit
7 or deny the allegations contained therein.

8 54. Answering Paragraph 54, Defendant lacks sufficient information or belief to admit
9 or deny the allegations contained therein.

10 55. Answering Paragraph 55, Defendant lacks sufficient information or belief to admit
11 or deny the allegations contained therein.

12 56. Answering Paragraph 56, Defendant denies the allegations contained therein.

13 57. Answering Paragraph 57, Defendant denies the allegations contained therein.

14 58. Answering Paragraph 58, Defendant denies the allegations contained therein.

15 59. Answering Paragraph 59, Defendant admits that TONY took possession of the
16 subject vehicle but denies the remaining allegations contained therein.

17 60. Answering Paragraph 60, Defendant denies the allegations contained therein.

18 61. Answering Paragraph 61, Defendant denies the allegations contained therein.

19 62. Answering Paragraph 62, Defendant denies that all the allegations in the
20 complaint attributed to TONY, if true, were within the course and scope of his employment.
21 Defendant admits that TONY was employed by Defendant at the time he repossessed the subject
22 vehicle, and that the act of repossession was within the course and scope of TONY'S
23 employment with Defendant.

24 63. Answering Paragraph 63, Defendant incorporates by this reference its answers to
25 paragraphs 1-62 above as though fully set forth here.

26 64. Answering Paragraph 64, Defendant denies the allegations contained therein.

27 65. Answering Paragraph 65, Defendant denies the allegations contained therein.

28

1 66. Answering Paragraph 66, Defendant incorporates by this reference its answers to
2 paragraphs 1-65 above as though fully set forth here.

3 67. Answering Paragraph 67, Defendant denies the allegations contained therein.

4 68. Answering Paragraph 68, Defendant denies the allegations contained therein.

5 69. Answering Paragraph 69, Defendant incorporates by this reference its answers to
6 paragraphs 1-68 above as though fully set forth here.

7 70. Answering Paragraph 70, Defendant denies the allegations contained therein.

8 71. Answering Paragraph 71, Defendant lacks sufficient information or belief to admit
9 or deny the allegations contained therein.

10 72. Answering Paragraph 72, Defendant lacks sufficient information or belief to admit
11 or deny the allegations contained therein.

12 73. Answering Paragraph 73, Defendant denies the allegations contained therein.

13 74. Answering Paragraph 74, Defendant incorporates by this reference its answers to
14 paragraphs 1-73 above as though fully set forth here.

15 75. Answering Paragraph 75, Defendant lacks sufficient information or belief to admit
16 or deny the allegations contained therein.

17 76. Answering Paragraph 76, Defendant lacks sufficient information or belief to admit
18 or deny the allegations contained therein.

19 77. Answering Paragraph 77, Defendant denies the allegations contained therein.

20 78. Answering Paragraph 78, Defendant denies the allegations contained therein.

21 79. Answering Paragraph 79, Defendant incorporates by this reference its answers to
22 paragraphs 1-78 above as though fully set forth here.

23 80. Answering Paragraph 80, Defendant denies the allegations contained therein.

24 81. Answering Paragraph 81, Defendant admits that TONY took possession of the
25 subject vehicle, but denies the remaining allegations contained therein.

26 82. Answering Paragraph 82, Defendant denies the allegations contained therein.

27 83. Answering Paragraph 83, Defendant denies the allegations contained therein.

28

1 84. Answering Paragraph 84, Defendant denies the allegations contained therein.

2
3 **PLAINTIFFS' PRAYER FOR RELIEF**

4 Answering plaintiffs' Prayer for Relief, Defendant denies that plaintiffs, or any of them,
5 are entitled to any relief against this answering Defendant, including the relief requested in the
6 complaint. All allegations of the complaint not specifically admitted in this answer are hereby
7 denied.

8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 1. As a separate answer and affirmative defense, Defendant alleges: the complaint
11 fails, in whole or in part, to state a claim upon which relief may be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 2. As a separate answer and affirmative defense, Defendant alleges: That Defendant
14 is not a "debt collector" under 15 U.S.C. 1692a or Civil Code §1788.2. Instead, Defendant is a
15 reposessor.

16 **THIRD AFFIRMATIVE DEFENSE**

17 3. As a separate answer and affirmative defense, Defendant alleges: Defendant
18 denies that Defendant was negligent in any fashion with respect to the damages, losses, injuries
19 and debts claimed by the Plaintiffs in the Complaint on file herein; however, if this answering
20 Defendant is found to be negligent (which supposition is denied and merely stated for the
21 purpose of this affirmative defense), then this answering Defendant provisionally alleges that
22 Defendant's negligence is not the sole and proximate cause of the resultant damages, losses and
23 injuries alleged by plaintiffs, and that the damages awarded to plaintiffs, if any, should be
24 apportioned according to the respective fault of the parties, persons, and entities, or their agents,
25 servants, and employees who contributed to and/or caused said resultant damages as alleged,
26 according to the proof presented at the time of trial.

27 ///

FOURTH AFFIRMATIVE DEFENSE

4. As a separate answer and affirmative defense, Defendant alleges: That while continuing to deny the allegations of the Complaint on file herein, that if Defendant is held liable for the damages, if any, awarded to Plaintiffs, Plaintiffs are barred or estopped from any recovery from Defendant based upon Plaintiffs' own fault, either active, primary, direct, or otherwise.

FIFTH AFFIRMATIVE DEFENSE

5. As a separate answer and affirmative defense, Defendant alleges: That Plaintiffs' conduct rather than conduct of this Defendant proximately caused the losses alleged as Plaintiffs failed to exercise reasonable care and diligence to avoid loss and avoid damages incurred, if any, as a result of the events alleged in Plaintiffs' Complaint.

SIXTH AFFIRMATIVE DEFENSE

6. As a separate answer and affirmative defense, defendant alleges: That Defendant is not a "debt collector" under 15 U.S.C. 1692a or Civil Code §1788.2. Instead, Defendant is a reposessor. As a result, this court lacks subject matter jurisdiction.

SEVENTH AFFIRMATIVE DEFENSE

7. As a separate answer and affirmative defense, defendant alleges: That liability for the amount of non-economic damages be allocated to this answering defendant in direct proportion to the applicable percentage of fault, if any, according to the Fair Responsibility Act of 1986 and Civil Code Section 1431, et seq.

EIGHTH AFFIRMATIVE DEFENSE

8. As a separate answer and affirmative defense, Defendant alleges: That the alleged violation(s) were not intentional and resulted notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation.

NINTH AFFIRMATIVE DEFENSE

9. As a separate answer and affirmative defense, Defendant alleges: Defendant as a repossession agency is not liable for the act or omission of a legal owner, debtor, lienholder, lessor or lessee, or an agent of any of them, in making an assignment to it or for accepting an

1 assignment from any legal owner, debtor, lienholder, lessor or lessee, or an agent of any of them
2 under Business and Professions Code 7507.13.

3 **TENTH AFFIRMATIVE DEFENSE**

4 10. As a separate answer and affirmative defense, Defendant alleges: That under
5 Business and Professions Code 7507.4 as a repossession agency Defendant was entitled to make
6 a demand for payment in lieu of repossession, if the demand is made pursuant to an assignment
7 for repossession.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 11. As a separate answer and affirmative defense, Defendant alleges: Defendant
10 intends to rely on all other properly-provable defenses and reserves the right to amend its answer,
11 or to place at issue additional affirmative defenses through the express or implied consent of the
12 parties, to and through the time of trial.

13
14 WHEREFORE, having fully answered the complaint, Defendant respectfully requests
15 judgment as follows:

- 16 1. Dismissing the complaint in its entirety and with prejudice;
17 2. Awarding Defendant its reasonable attorney's fees incurred herein;
18 3. Awarding Defendant its costs and disbursements; and,
19 4. Awarding Defendant such other and further relief as the court deems just and
20 appropriate.

21
22 **JURY TRIAL REQUESTED**

23 Dated: August 22, 2007

VOGL & MEREDITH LLP

24
25
26 By: 

MICHAEL S. BURKE
Attorney for Defendant,
NATIONAL AUTO RECOVERY
BUREAU, INC.